

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

**FILED**

JAN 12 2017

Clerk, U.S. District Court  
District Of Montana  
Missoula

KEITH M. BAITY,

CV 16-103-M-DLC-JCL

Plaintiff,

ORDER

vs.

UNITED STATES POSTAL  
SERVICE,

Defendant.

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendation on December 23, 2016, recommending granting Defendant the United States Postal Service's motion to dismiss. Plaintiff Keith M. Baity failed to timely object to the Findings and Recommendation, and so waived his right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendation, the Court finds no


clear error in Judge Lynch's conclusion that Defendant's motion should be granted because the claims against the United States Postal Service are precluded by sovereign immunity. 28 U.S.C. § 2680(h) (stating that the United States is immune from certain claims under the Federal Tort Claims Act). Further, Plaintiff's claims against Meagan J. Brennan, to the extent she is being sued in her personal capacity, are also precluded due to her individual immunity. *M.J. ex rel. Beebe v. United States*, 721 F.3d 1079, 1084 (9th Cir. 2013) ("The [Federal Tort Claims Act] immunizes federal employees from individual liability for an action that is properly against the United States under the FTCA.") (citation and internal punctuation marks omitted).

Accordingly, there being no clear error in Judge Lynch's Findings and Recommendation, IT IS ORDERED that:

(1) Judge Lynch's Findings and Recommendation (Doc.15) are ADOPTED IN FULL.

(2) Defendant United States Postal Service's Motion to Dismiss for Lack of Jurisdiction (Doc. 7) is GRANTED, and this action DISMISSED.

Dated this 12<sup>th</sup> day of January, 2017.

  
Dana L. Christensen, Chief Judge  
United States District Court